



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201132027**

Release Date: 8/12/2011

Date: May 17, 2011

UIL: 507.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

LEGEND:

City =

State =

Y =

Date 1 =

Dear :

This is in response to your ruling request, dated June 13, 2008, with respect to the proposed transfer of your assets to a private operating foundation in the manner and under the circumstances described below.

Facts:

You are organized as a charitable trust, recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code), and classified as a private operating foundation within the meaning of section 4942(j)(3). You operate a life-care retirement facility for the aged in City, State. To better protect your assets and provide a more clearly understandable form of business organization, your trustees propose to transfer all of your assets and operations, for no consideration, to Y, a state not-for profit corporation, organized on Date 1. Y will apply for recognition of exemption under section 501(c)(3) and seek classification as a private operating foundation under section 4942(j)(3). The board of directors of Y will be the same as your trustees.

Ruling Requested:

You have requested the following ruling:

Y, a state not-for-profit corporation, will be permitted to take advantage of any special rules or savings provisions under Chapter 42 to the same extent as available to the present testamentary trust.

Law:

Section 501(c)(3) of the Code provides, in pertinent part, that an organization must be organized and operated exclusively for religious, charitable, or educational purposes and no part of its net earnings may inure to the benefit of any private shareholder or individual. Section 507(b)(2) of the Code provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to a liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 4940(a) of the Code generally imposes an excise tax on a private foundation's net investment income for the taxable year.

Section 4940(e) of the Code provides for a reduction in the excise tax on net investment income to one percent where a private foundation meets certain distribution requirements.

Section 4940(e)(6) of the Code provides that in the case of a private foundation which is a successor to another private foundation, the determination of whether the successor foundation qualifies for the reduced excise tax shall be made by taking into account the experience of the transferor foundation and the successor foundation.

Section 4942 of the Code generally imposes a tax on the income of a private foundation (other than an operating foundation under section 4942(j)(3)) for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year.

Section 4942(c) of the Code provides that the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

Section 4942(i) of the Code provides for a carryover of the amount by which qualifying distributions during the five preceding taxable years (other than amounts required to be distributed out of corpus under section 4942(g)(3)) have exceeded the distributable amounts for such years.

Section 4942(j)(3) of the Code provides in part that the term "operating foundation" means any organization that makes certain qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized. An operating foundation must meet (i) the "income" test and (ii) either the "assets" test, the "endowment" test or the "support" test.

Section 1.507-3(a)(1) of the Treasury Regulations (regulations) provides that, in a section 507(b)(2) transfer, a transferee organization will not be treated as a newly created organization. The transferee organization is treated as possessing those attributes and characteristics of the transferor organization which are described in section 1.507-3(a)(2), (3) and (4).

Section 1.507-3(a)(2)(i) of the regulations provides that a transferee organization shall succeed to the aggregate tax benefit of the transferor organization in an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer.

Section 1.507-3(a)(3) of the regulations provides, in general, that in the event of a transfer of assets described in section 507(b)(2) of the Code, any person who is a substantial contributor (within the meaning of section 507(d)(2)) with respect to the transferor foundation shall be treated as a substantial contributor with respect to the transferee foundation.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting there from) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) of the Code to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person or persons that effectively controlled the transferor private foundation, the transferee private foundation will be treated as if it were the transferor private foundation for purposes of sections 4940 through 4948 of the Code and section 507 through 509.

Section 1.507-3(c)(1) of the regulations provides that a transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. For purposes of section 507(b)(2), the terms "other adjustment, organization or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2) of the regulations provides that the term "significant disposition of assets to one or more private foundations" includes any disposition (or series of related dispositions) by a private foundation to one or more private foundations of 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year in which the transfers occur.

Section 53.4940-1(d) of the Foundations and Similar Excise Tax Regulations (foundation regulations) provides that gross investment income means the gross amounts of income from interest, dividends, rents, and royalties received by a private foundation from all sources, but does not include such income to the extent included in computing the tax imposed by section 511 of the Code.

Section 53.4940-1(f) of the foundation regulations provides that for purposes of the tax imposed by section 4940 of the Code, there shall be taken into account only capital gains and losses from the sale or other disposition of property held by a private foundation for investment purposes.

Rev. Rul. 2002-28, 2002-1 C.B. 941, discusses, among other things, a private foundation's responsibilities when it transfers all of its assets to one or more effectively controlled private foundations and gives detailed information as to the applicability of the excise taxes imposed by sections 4940-4945 of the Code. The ruling presents three situations in which a private foundation transfers all of its assets to one or more other effectively controlled private foundations. In Situation Two, the trustees of a private foundation trust created a not-for-profit corporation to carry on the trust's charitable activities, which the trustees have determined can be more effectively accomplished by operating in corporate form. All of the trust's assets and liabilities are transferred to the not-for-profit corporation.

Analysis:

After Y is recognized as an organization described in section 501(c)(3) of the Code and classified as a private operating foundation under section 4942(j)(3), you will transfer, for no consideration, 100 percent of your assets to Y. Our evaluation of the facts and circumstances in your ruling request indicates that the proposed transfer of all of your assets to Y would be similar to the facts and circumstances described in Situation Two of Rev. Rul. 2002-28, *supra*. Your transfer is described in section 507(b)(2). Therefore, Y would be treated as if it were you for purposes of Chapter 42 and sections 507 through 509, as outlined below.

SECTION 507

Section 507(b)(2) of the Code describes a transfer from one private foundation to another private foundation according to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. Section 1.507-3(c)(1) of the regulations describes the terms "other adjustment, organization, or reorganization" as including any partial liquidation or any other significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. The term "significant disposition of assets to one or more private foundations" is defined by section 1.507-3(c)(2) as any disposition or series of dispositions where the aggregate value transferred is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year. Since you will transfer all of your assets to Y, a private foundation, for no consideration and such transfer will not be a distribution out of current income, your proposed transfer will be a significant disposition of assets that qualifies as a transfer under section 507(b)(2).

In the case of a significant disposition of assets to one or more private foundations within the meaning of section 507(b)(2) of the Code, the transferee organization shall be treated as

possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of section 1.507-3(a) of the regulations. As discussed above, your transfer will be described in section 507(b)(2). Accordingly, Y will be treated as possessing your attributes and characteristics as described in sections 1.507-3(a)(2), (3), (4) and (9). Under section 1.507-3(a)(2) of the regulations, Y will be treated as possessing your aggregate tax benefit consistent with section 1.507-3(a)(1) and (2)(i). Under section 1.507-3(a)(3), any person who is a "substantial contributor" with regard to you will be treated as a "substantial contributor" with respect to Y. Finally, under section 1.507-3(a)(4), where transferee liability applies, Y will be treated as receiving the transferred assets subject to your prior excise tax liabilities under chapter 42 (and any penalties resulting therefrom), if any, to the extent you did not previously satisfy those liabilities.

Under section 1.507-3(a)(9)(i) of the regulations, if a private foundation transfers all of its net assets to another private foundation which is effectively controlled by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 (section 4940 et seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. You, a private foundation, will transfer all of your assets to Y, a private foundation that will be controlled by the same persons that control you. Accordingly, Y will be treated as if it were you for all private foundation purposes.

SECTION 4940

Section 4940(a) of the Code generally imposes an excise tax on a private foundation's net investment income for the taxable year. Sections 53.4940-1(d) and (f) of the foundation regulations state that gross investment income includes interest, dividends, rents, royalties and capital gains from the sale or other disposition of property held for investment purpose. Because you will transfer all of your assets to Y, who will be effectively controlled by the same persons, any excess section 4940 tax that you paid may be used by Y to offset its own section 4940 tax liability. See section 1.507-3(a)(9)(i).

After you transfer all your assets to Y, Y will be treated as your successor for purposes of section 4940(e)(6) of the Code and will be entitled to take into account your qualifying distributions experience from certain prior years in determining whether it satisfies the requirements of section 4940(e) for the reduced rate of tax.

SECTION 4942

Section 4942 of the Code generally imposes a tax on the undistributed income of a private foundation (other than an operating foundation under section 4942(j)(3)) for any taxable year. Since you will transfer all of your assets to Y, who will be effectively controlled by the same persons, Y will be treated as though it were you under section 1.507-3(a)(9)(i) of the regulations. Therefore Y will assume all obligations with respect to your "undistributed income" within the meaning of section 4942(c), if any, and Y will reduce its own distributable amount under section 4942 by the amount of your excess qualifying distributions under section 4942(i).

Conclusion:

Based on the foregoing, we rule as follows:

Y will be permitted to take advantage of any special rules or savings provisions under Chapter 42 to the same extent as available to you.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling assumes that Y will apply for recognition of exemption under section 501(c)(3) of the Code and seek classification as a private operating foundation under section 4942(j)(3); however, this ruling makes no determination as to the exempt status of Y. Y must obtain its own determination letter recognizing it as a tax exempt entity.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Acting Manager,
Exempt Organizations
Technical Group 1

Enclosure:
Notice 437